



September 21, 2000

Ms. Sarajane Milligan  
Assistant County Attorney  
Harris County  
1019 Congress, 15<sup>th</sup> Floor  
Houston, Texas 77002-1700

OR2000-3680

Dear Ms. Milligan:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 139229.

The Harris County Medical Examiner's Office (the "medical examiner") received a request for information relating to dead bodies delivered to the medical examiner's office during the past two years. Except for information relating to the decedents' next of kin, you have compiled and released the requested information. You seek to withhold the names, addresses, and telephone numbers of next of kin under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the representative sample of responsive information you submitted.<sup>1</sup>

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information that is protected by a common law or a constitutional right of privacy. Gov't Code § 552.101. Information must be withheld from the public under section 552.101 in conjunction with common law privacy when (1) it is highly intimate and embarrassing, such that its release would be highly

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<sup>1</sup>This letter ruling assumes that the representative sample of responsive information that you submitted is truly representative of that information as a whole. This letter ruling neither addresses nor authorizes the medical examiner to withhold any responsive information that is substantially different from the information you submitted. See Gov't Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

objectionable to a person of ordinary sensibilities, *and* (2) there is no legitimate public interest in its disclosure. *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The specific matters considered to be intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* include sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimacy, psychiatric treatment, attempted suicide, and injuries to reproductive organs. *Id.* at 683; *see also* Open Records Decision No. 659 at 5 (1999). Generally speaking, the scope of common law privacy under *Industrial Foundation* is narrowly confined. *See* Open Records Decision Nos. 328 at 3 (1982), 268 at 2 (1981).

Constitutional privacy under section 552.101 protects two kinds of interests. *See* Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987); *see also Whalen v. Roe*, 429 U.S. 589, 599-600 (1977). The first is the interest in independence in making certain important decisions related to the "zones of privacy," pertaining to marriage, procreation, contraception, family relationships, and child rearing and education, that have been recognized by the United States Supreme Court. *See* Open Records Decision No. 455 at 3-7 (1987); *see also Fado v. Coon*, 633 F.2d 1172 (5<sup>th</sup> Cir. 1981). The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. *See* Open Records Decision No. 455 at 6-7 (1987); *see also Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5<sup>th</sup> Cir. 1985), *reh'g denied*, 770 F.2d 1081 (1985), *cert. denied*, 474 U.S. 1062 (1986). Constitutional privacy under section 552.101 is reserved for "the most intimate aspects of human affairs." Open Records Decision No. 455 at 8 (1987), *quoting Ramie v. City of Hedwig Village*, 765 F.2d at 492.

You acknowledge that a decedent has no right of privacy, as privacy is a personal right that lapses at death. *See* Open Records Decision No. 272 at 1 (1981). You argue, however, that the disclosure of the names, addresses, and telephone numbers of the decedents' next of kin would violate the rights of privacy of those individuals. You therefore seek to protect the identities of the next of kin of every decedent. You also express particular concern for the privacy rights of survivors of deceased children and of individuals who committed suicide or otherwise died violently. However, you do not confine the next of kin information that you seek to withhold to those three specific situations. Additionally, for the information you submitted as a representative sample, you do not identify any particular decedent for whom you contend that the identity of the next of kin should not be disclosed.

We have carefully considered your arguments and have thoroughly examined the information that you submitted. We conclude that the delivery of the body of an individual's relative to the medical examiner is not inherently intimate or embarrassing, such that the public disclosure of that fact would be highly objectionable to a reasonable person. Likewise, we do not believe that the involvement of the medical examiner with a decedent's remains, standing alone, implicates a relative's constitutional right of privacy. Thus, the identities of the decedents' next of kin are not protected from disclosure, as a category of information, under either common law or constitutional privacy.

Furthermore, your representative sample of information reveals no specific circumstances which, in our opinion, entitle the decedent's next of kin to protection from disclosure based on a right of privacy under either common or constitutional law. As you have not submitted all of the information at issue, we cannot determine whether the release of the relative's identity would implicate that relative's right of privacy in any other particular case. Accordingly, we conclude that, based on the information before us, the names, addresses, and telephone numbers of the next of kin are not excepted from disclosure under section 552.101 of the Government Code. The medical examiner must release that information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

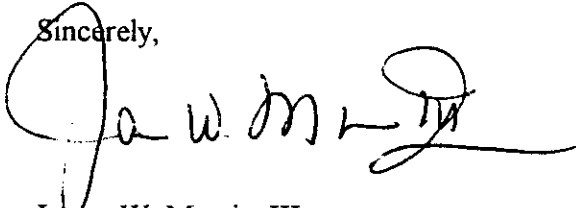
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J W Morris III", with a large, stylized initial "J" and a long horizontal flourish extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/ljp

Ref: ID# 139229

Encl. Submitted documents

cc: Mr. Tony Kovalesski  
KPRC-TV  
P.O. Box 2222  
Houston, Texas 77252  
(w/o enclosures)